

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL L. WINSTON,

Plaintiff,

v.

JANSSEN PHARMACEUTICAL, INC.,

Defendant.

ORDER

16-cv-23-jdp

Pro se plaintiff Michael Winston is proceeding on several claims against defendant Janssen Pharmaceuticals on a theory that there is a design defect in Risperdal/risperidone, a drug defendants manufacture. Winston says that the drug caused him to grow breasts that are painful.

The case has been stayed for many months while the court attempted to find counsel for Nelson. Dkt. 17. During this time, the court has contacted members of the Western District of Wisconsin Bar Association and the Seventh Circuit Bar Association as well as lawyers who have previously conducted Risperdal litigation.

Unfortunately, no lawyer has agreed to take the case and the court has exhausted its options. Thus, Winston now has a choice: (1) proceed on his own without counsel; or (2) dismiss this case without prejudice.

If Winston chooses the first option, I will direct the clerk of court to set a telephone conference with Magistrate Judge Stephen Crocker to determine a new schedule for the case. After that, it will be up to Winston to determine how to litigate his claim. The court cannot provide legal advice.

If Winston chooses to dismiss the case, the dismissal will be without prejudice, which means that Winston could file a new case at a later date. However, the statute of limitations would continue to run. *Dupuy v. McEwen*, 495 F.3d 807, 810 (7th Cir. 2007) (“[W]hen a suit is dismissed without prejudice, the statute of limitations continues to run from the date (normally the date of the injury) on which the claim accrued.”).

ORDER

IT IS ORDERED that:

1. The stay in this case is LIFTED.
2. Plaintiff Michael Winston may have until December 3, 2018, to inform the court in writing whether he wishes to: (1) continue litigating the case but without counsel or (2) dismiss the case without prejudice.
3. If Winston chooses the first option, the clerk of court will set a telephone scheduling conference with Magistrate Judge Crocker. If Nelson fails to respond by December 3, I will construe his silence to mean that he is choosing the second option and I will direct the clerk of court to close the case.

Entered November 19, 2018.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge